# EX. 15
# APP. 124 - 126

Weinberg v. National Football League Players Association et al Doc. 14 Att. 5

Briefs and Other Related Documents
Wilson v. Wells Fargo Financial Acceptance, Inc.M.D.Tenn.,2003.Only the Westlaw citation is currently available.

United States District Court,M.D. Tennessee, Nashville Division.
Gerald WILSON, et al.
v.
WELLS FARGO FINANCIAL ACCEPTANCE, INC., et al.
**No. 3:02-0383.**

April 9, 2003.

MEMORANDUM

CAMPBELL, J.

*1 Pending before the Court is Defendants' Renewed Motion to Compel Arbitration and to Dismiss (Docket No. 64). For the reasons stated herein, Defendants' Motion is GRANTED.

FACTS

Plaintiffs filed this action, on behalf of themselves and other similarly situated African-Americans, against Defendants for violations of the Equal Credit Opportunity Act ("ECOA"). Plaintiffs allege that Defendants discriminated against Plaintiffs and others on the basis of race in connection with the financing of vehicles, in particular a vehicle purchased from Hippodrome Oldsmobile-Nissan ("Hippodrome") in Nashville, Tennessee. Plaintiffs contend that Defendants' credit extension policy has a disparate impact upon African-American financing applicants.

Defendants have alleged that Plaintiffs entered into three retail sales agreements with Hippodrome, each for the purchase of a vehicle: one in November of 1998, one in April of 1999, and one in March of 2001. Each of these contracts was eventually assigned to Defendants. In connection with the first two agreements, Plaintiffs executed separate documents called "Buyer's Agreements" which included arbitration clauses. The Buyer's Agreements expressly apply to Hippodrome, its successors, transferees, and assignees. The arbitration provisions provide, in pertinent part, as follows:

Any party covered by this Agreement may elect to have any claim, dispute or controversy ("Claim") of any kind arising out of or relating to your Retail Installment Contract, or any prior or future dealings between us, resolved by binding arbitration. A Claim may include, but shall not be limited to, the issue of whether any particular Claim must be submitted to arbitration....

Docket No. 46, Ex. B and C.

Plaintiffs' claims herein arise from the 2001 transaction with Hippodrome. Defendants argue that Plaintiffs agreed, in 1998 and 1999, to arbitrate any claims relating to "prior or future transactions" with Hippodrome and its successors, transferees and assignees, including Defendant, and that Plaintiffs' action herein fits that characterization. Plaintiffs oppose arbitration in this case and have filed several arguments in opposition to Defendants' Motion.

ARBITRATION

When asked by a party to compel arbitration under a contract, a federal court must determine whether the parties agreed to arbitrate the disputed issue. *Stout v. Byrider*, 228 F.3d 709, 714 (6th Cir.2000). Courts are to examine the language of the contract in light of the strong federal policy in favor of arbitration. *Id.* Any ambiguities in the contract or doubts as to the parties' intentions should be resolved in favor of arbitration. *Id.*

When considering a motion to compel arbitration, a court must (1) determine whether the parties agreed to arbitrate; (2) determine the scope of that agreement; and (3) if federal statutory claims are asserted, consider whether Congress intended those claims to be nonarbitrable. *Id.* If the court determines that some but not all of the issues are arbitrable, then the court must determine whether to stay the remainder of the proceedings pending arbitration. *Id.*

*2 Arbitration is a contract issue, and only those issues which the parties have agreed to submit to arbitration may be arbitrated. *Tennessee Valley Trade and Labor Council v. Tennessee Valley Authority*, 991 F.Supp. 917, 919 (M.D.Tenn.1998). When a contract contains an arbitration clause, the presumption is for arbitrability unless it can be positively determined that the grievance at issue could in no way be covered by the arbitration clause. *Id.* An agreement to arbitrate civil rights must comport with principles of contract law, and thus, in deciding whether such arbitration agreements are enforceable, state law contract principles control. *Cooper v. MRM Investment Co.,* 199 F.Supp.2d 771, 775 (M.D.Tenn.2002).

Defendants contend that the arbitrator, not the Court, is the proper person to determine whether Plaintiffs' claims are subject to arbitration. Docket No. 57, p. 2. The question of arbitrability, whether a contract creates a duty for the parties to arbitrate the particular grievance, is an issue for judicial determination unless the parties "clearly and unmistakably" provide otherwise. *Howsam v. Dean Witter Reynolds, Inc.,* 123 S.Ct. 588, 2002 WL 31746742 at * *3 (Dec. 10, 2002); *Riley Mfg. Co., Inc. v. Anchor Glass Container Corp.,* 157 F.3d 775, 779 (10th Cir.1998). Unless the parties have clearly and unmistakably provided otherwise, the question of whether the parties have agreed to submit a dispute to arbitration is a question for the court, not the arbitrator. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Inc. v. Pepsi-Cola General Bottlers, Inc.,* 958 F.2d 1331, 1333 (6th Cir.1992); *see also AT & T Technologies, Inc. v. Communications Workers of America,* 475 U.S. 643, 106 S.Ct. 1415, 1417 (1986).

Here, the Court finds that the parties have "clearly and unmistakably" provided that the question of whether a particular claim should be submitted to arbitration may be submitted to arbitration. The arbitration provisions of the two contracts provide: "A Claim may include, but shall not be limited to, the issue of whether any particular Claim must be submitted to arbitration...." Docket No.46, Exs. B and C. Thus, the issue of arbitrability is expressly included in those claims which may be submitted to arbitration.

Determining the issue of arbitrability in this action directly involves an interpretation of the arbitration provisions of the contracts at issue. Defendants claim that the issue of whether to compel arbitration is clearly itself to be submitted to arbitration. Plaintiffs argue otherwise. The U.S. Supreme Court recently noted that a court should not, on the basis of "mere speculation" that an arbitrator might interpret certain ambiguous agreements in a manner that casts their enforceability into doubt, take upon itself the authority to decide the antecedent question of how the ambiguity is to be resolved. *Pacificare Health Systems, Inc. v. Book,* 123 S.Ct. 1531, 2003 WL 1791225 at *4 (April 7, 2003).

*3 Accordingly, the Court finds that Defendants' Renewed Motion to Compel Arbitration (Docket No. 64) should be GRANTED. This action should be submitted to arbitration, where Plaintiffs may again raise their opposition and arguments concerning arbitrability of these claims.

MOTION TO DISMISS

Defendant has also moved to dismiss this action, in light of the compelled arbitration. Federal law provides that in any suit or proceeding brought in the U.S. courts upon any issue referable to arbitration under an agreement in writing for such arbitration, the court, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such agreement, shall, on application of one of the parties, stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement. 9 U.S.C. § 3. Courts may dismiss, rather than stay, a case when all of the claims must be submitted to arbitration. *Alford v. Dean Witter Reynolds, Inc.,* 975 F.2d 1161, 1164 (5th Cir.1992).

The decision concerning arbitrability turns on the scope of the issues before the court that are governed by the arbitration agreement. *Quasem Group, Ltd. v. W.D. Mask Cotton Co.,* 967 F.Supp. 288, 294 (W.D.Tenn.1997). For example, if all of the issues in dispute are governed by the arbitration agreement, then it would generally be an inefficient use of the court's docket to enter a stay, when the arbitration will likely be dispositive of all the issues. *Id.* On the other hand, if only a small part of the dispute before the court is governed by the arbitration agreement then the court should likely enter a stay pending the outcome of arbitration. *Id.*

In this case, the Court is convinced that if arbitration is appropriate at all under the subject agreements, then all issues brought in this action are governed by the arbitration agreement. Accordingly, there being no further issues before the Court, Defendant's Motion to Dismiss (Docket No. 64) is GRANTED and this action is DISMISSED, without prejudice to refiling the case after completion of the arbitration, if necessary.

IT IS SO ORDERED.

ORDER

Pending before the Court are Defendants' Renewed Motion to Compel Arbitration and to Dismiss (Docket No. 64) and Plaintiffs' Motion for the Court to Take Judicial Notice of the Record in *Cason v. NMAC* and Designate that Record as Part of the Record of these Proceedings for the Sake of any Appeal of this Court's Ruling on the Motion to Compel Arbitration (Docket No. 76).

For the reasons stated in the accompanying Memorandum, Defendants' Renewed Motion to Compel Arbitration and to Dismiss is GRANTED, without prejudice to refiling the case after completion of the arbitration, if necessary.

Plaintiff's Motion is, therefore, moot.

IT IS SO ORDERED.

M.D.Tenn.,2003.
Wilson v. Wells Fargo Financial Acceptance, Inc.
Not Reported in F.Supp.2d, 2003 WL 1877336 (M.D.Tenn.)

Briefs and Other Related Documents (Back to top)

• 3:02CV00383 (Docket) (Apr. 16, 2002)

END OF DOCUMENT

# EX. 16
# APP. 127 - 129

Briefs and Other Related Documents
Copeland v. KB HomeN.D.Tex.,2004.Only the Westlaw citation is currently available.
United States District Court,N.D. Texas, Dallas Division.
Monique COPELAND, Plaintiff,
v.
KB HOME and Ron Reyes, Defendants.
**No. Civ.A. 3:03-CV-227-L.**

Aug. 4, 2004.

Christine N. Huffman, Janette Johnson, Janette Johnson & Associates, Dallas, TX, for Plaintiff.
Cheryl D. Smith, Law Office of Cheryl D Smith, Fort Worth, TX, for Defendant.

*ORDER*

LINDSAY, J.

*1 Before the court is Defendant's Motion to Dismiss Plaintiff's Cause of Action, filed December 23, 2003.[FN1] After careful consideration of the motion, response, reply,[FN2] record and applicable law, the court denies Defendant's Motion to Dismiss Plaintiff's Cause of Action.

FN1. The docket sheet reflects two entries for Defendant's Motion to Dismiss Plaintiff's Cause of Action on December 23, 2003. Both motions are identical, except that Docket Entry # 9 has an exhibit attached while Docket Entry # 10 does not. Given the references to the attached exhibit in the motions, it is clear that Defendant intended to attach an exhibit to its motion. The court therefore denies as moot Defendant's Motion to Dismiss Plaintiff's Cause of Action (Docket Entry # 10), as it is duplicative of Defendant's Motion to Dismiss Plaintiff's Cause of Action (Docket Entry # 9).

FN2. Defendant titled its reply as "Defendant's Rebuttal to Plaintiff's Response to Dismiss Cause of Action." The court will refer to this document as Defendant's reply.

I. *Factual and Procedural Background*

Plaintiff Monique Copeland ("Plaintiff' or "Copeland") was employed as a Sales Counselor by Defendant KB Home ("Defendant" or "KB Home"). On December 18, 2000, Plaintiff signed a Salesperson Employment Agreement ("Agreement"), which contained, among other things, a section regarding binding arbitration. Plaintiff contends that during her employment with Defendant, she was subjected to sexual harassment and retaliation.

On January 22, 2002, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission and the Texas Commission on Human Rights, alleging retaliation and sex discrimination. On November 2, 2002, Plaintiff received her Right-to-Sue letter. On January 31, 2003, Plaintiff filed this lawsuit against KB Home and Ron Reyes ("Reyes"),[FN3] contending sex discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 ("Title VII") and assault and battery. On December 23, 2003, Defendant moved to dismiss Plaintiff's lawsuit pursuant to Fed.R.Civ.P.41(b) "so that this dispute may be presented for binding arbitration...." Def. Mtn. at 1. Although Defendant refers to the motion as one to dismiss, it is more properly characterized as one to compel arbitration and dismiss. The court now considers this motion.

FN3. At all times relevant to this lawsuit, Reyes was a Regional Sales Manager for KB Home. Copeland has not served Reyes with her Complaint.

II. *Analysis*

Defendant requests that the court dismiss Plaintiff's lawsuit without prejudice and compel arbitration. Plaintiff counters that dismissal pursuant to Fed.R.Civ.P. 41(b) is not the appropriate relief for a party seeking to compel arbitration and that pursuant to the Federal Arbitration Act ("FAA"), a court must stay, not dismiss, lawsuits involving arbitrable issues pending arbitration. Plaintiff further contends that dismissal and arbitration are unwarranted because an arbitration agreement does not exist, and even if an arbitration agreement exists, it is invalid and unenforceable because it is unconscionable. Lastly, Plaintiff contends that Defendant waived its right to arbitration.

There appears to be no dispute that if an arbitration agreement exists, it would be governed by the FAA. The FAA provides, in relevant part:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

*2 9 U.S.C. § 3. "This rule, however, was not intended to limit dismissal of a case in the proper circumstances." *Alford v. Dean Witter Reynolds, Inc.,* 975 F.2d 1161, 1164 (5th Cir.1992). Dismissal is appropriate "when all of the issues raised in the district court must be submitted to arbitration." *Alford,* 975 F.2d at 1164. The court must therefore decide whether to compel arbitration before it can determine if dismissal is warranted.

The court must apply a two-step inquiry when determining whether to compel arbitration. *Banc One Acceptance Corp. v. Hill,* 367 F.3d 426, 429 (5th Cir.2004). "First, the court must determine whether the parties agreed to arbitrate the dispute. Once the court finds that the parties agreed to arbitrate, it must consider whether any federal statute or policy renders the claims non-arbitrable." *Banc One,* 367 F.3d at 429 (quoting *R.M. Perez & Assocs., Inc. v. Welch,* 960 F.2d 534, 538 (5th Cir.1992)).

In the first step, the court must determine "whether there is a valid agreement to arbitrate between the parties; and ... whether the dispute in question falls within the scope of that arbitration agreement." *Banc One,* 367 F.3d at 429 (citing *Webb v. Investacorp, Inc.,* 89 F.3d 252, 256 (5th Cir.1996)). The court must apply state contract law in deciding these questions. *Id.; see also Will-Drill Res., Inc. v. Samson Res. Co.,* 352 F.3d 211, 214 (5th Cir.2003).

Under Texas law, a valid contract requires "(1) an offer; (2) an acceptance in strict compliance with the terms of the offer; (3) a meeting of the minds; (4) each party's consent to the terms; and (5) execution and delivery of the contract with intent that it be mutual and binding." *Coffel v. Styker Corp.,* 284 F.3d 625, 640 n. 17 (5th Cir.2002) (quoting *Copeland v. Alsobrook,* 3 S.W.3d 598, 604 (Tex.App.-San Antonio 1999, no pet.)).

Plaintiff contends that no agreement to arbitrate exists because Defendant did not comply with a condition precedent. Specifically, Plaintiff refers to Defendant's failure to initial the space provided for in the Salesperson Employment Agreement to indicate its intent to submit to binding arbitration. The Salesperson Employment Agreement provides as follows:

By initialing in the space below and signing this Agreement at the bottom, [Plaintiff] and [Defendant] indicate their voluntary agreement to the terms of this arbitration procedure. Both parties understand that by voluntarily agreeing to the terms of the arbitration procedure described herein, both are giving up any constitutional or statutory right they may possess to have covered claims decided in a court of law before a judge or jury.

Def. Mtn., Ex. A, p. 10 (emphasis omitted). Below this paragraph are two spaces, one labeled "Initials of Company Representative" and the other labeled "Initials of Employee." Plaintiff initialed the space labeled "Initials of Employee," while the other space was not initialed. The Salesperson Employment Agreement, however, was signed by both Plaintiff and an employee of Defendant.

*3 Defendant does not dispute that it failed to initial the space provided in the Agreement to indicate its intent to submit to binding arbitration. Instead, Defendant contends that Plaintiff "fails to [c]ite any authority that the agreement would be unenforceable absent initials at the bottom of the page." Def. Reply at 3. It is, however, the burden of the party seeking to compel arbitration to establish "its contractual right to arbitration, which contractual right was dependent on compliance with an express condition precedent." *Weekley Homes, Inc. v. Jennings,* 936 S.W.2d 16, 19 (Tex.App.-San Antonio 1996, writ denied) (citing *City of Alamo v. Garcia,* 878 S.W.2d 664, 665 (Tex.App.-Corpus Christi 1994, no writ)).

If the parties to a contract intend for their signatures to be a condition precedent to the formation of a contract, then a contract is not formed unless both parties sign the contract. *Simmons and Simmons Constr. Co v. Rea,* 155 Tex. 353, 286 S.W.2d 415, 419 (Tex.1955); *cf. ABB Kraftwerke Aktiengesellschaft v. Brownsville Barge & Crane, Inc.,* 115 S.W.3d 287, 292 (Tex.App.-Corpus Christi 2003, pet. denied) (Signatures are not required where there is no evidence of the parties' intent to require signatures as a condition precedent to the agreement becoming a binding contract.).

The plain, unequivocal language of the arbitration provision in question establishes that the parties intended and expected the Agreement to be *initialed* and signed as a condition precedent for the formation of an arbitration agreement. The page of the Agreement that contained the arbitration provision was the only page of the Agreement that required both parties to initial it. In this case, Defendant, through an agent or employee, failed to initial the Agreement. In light of the plain and unambiguous language, that an employee of Defendant signed the Agreement but failed to *initial* the space provided for after the section relating to arbitration establishes, as far as the court is concerned, that Defendant agreed to all the provisions in the Agreement, except for those relating to arbitration. The evidence is undisputed that Defendant did not initial the Agreement, as required by its express terms. The court therefore determines that Defendant did not satisfy a condition precedent to the formation of a contract, and thus no contract to arbitrate exists. Moreover, Defendant has set forth no evidence or authority that would relieve it of its failure to initial the page relating to arbitration. As no contract or agreement to arbitrate exists, the court cannot and will not compel arbitration. Accordingly, Defendant's Motion to Dismiss Plaintiff's Cause of Action is denied.[FN4]

FN4. Having found that no valid agreement to arbitrate exists, the court need not address Plaintiff's remaining grounds in opposition of Defendant's Motion to Dismiss Plaintiff's Cause of Action.

III. Service on Defendant Ron Reyes

The court notes that Defendant Reyes has not been served. This action was filed on January 31, 2003. Well over 120 days have passed, and the clerk's docket sheet reflects that no service has been made on Defendant Reyes. Fed.R.Civ.P. 4(m) provides that when service is not made on a defendant within 120 days after filing of the complaint, the court may, after notice to the plaintiff, dismiss the action as to that defendant without prejudice or instruct the plaintiff to effect service within a specific time.

*4 Copeland is hereby directed to effect service on Defendant Ron Reyes no later than September 3, 2004, or show good cause in writing for the failure or inability to effect service on Defendant Ron Reyes by September 3, 2004. Failure of Copeland to effect service or show good cause will result in dismissal of this action without prejudice.

IV. *Conclusion*

For the reasons stated herein, the court denies Defendant's Motion to Dismiss Plaintiff's Cause of Action, and directs Plaintiff to serve Defendant Ron Reyes no later than September 3, 2004, or show good cause in writing for the failure or inability to effect service on Defendant Ron Reyes by September 3, 2004.

It is so ordered.

N.D.Tex.,2004.
Copeland v. KB Home
Not Reported in F.Supp.2d, 2004 WL 1778949 (N.D.Tex.)

Briefs and Other Related Documents (Back to top)

- 2004 WL 1596871 (Trial Motion, Memorandum and Affidavit) Defendant's Rebuttal to Plaintiff's Response to Dismiss Cause of Action and Brief in Support (Feb. 2004) Original Image of this Document (PDF)
- 2004 WL 1596868 (Trial Motion, Memorandum and Affidavit) Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's Cause of Action and Brief in Support (Jan. 23, 2004) Original Image of this Document (PDF)
- 2003 WL 23658745 (Trial Pleading) Defendant K B Home's Original Answer to Plaintiff's Complaint (Apr. 30, 2003) Original Image of this Document (PDF)
- 3:03cv00227 (Docket) (Jan. 31, 2003)

END OF DOCUMENT

# EX. 17
# APP. 130 - 136

Briefs and Other Related Documents
Rubin v. Sona Intern. Corp.S.D.N.Y.,2006.Only the Westlaw citation is currently available.

United States District Court,S.D. New York.
Michael RUBIN and Michael Rubin Associates, L.L.C., Plaintiffs,
v.
SONA INTERNATIONAL CORPORATION; Sona Laser Centers, Inc.; James H. Amos, Jr.; Heather Rose; Thomas R. Noon; Dennis R. Jones; Cookie Jones; and Carousel Capital, Inc., Defendants.
**No. 05 Civ. 6305(SAS).**

March 3, 2006.

**Background:** Franchisee brought action against franchisor seeking damages and rescission of franchise agreement. Franchisor moved to dismiss complaint.

**Holdings:** The District Court, Scheindlin, J., held that:

(1) franchisee's claim that franchise agreement was void ab initio was to be determined by arbitrator, and

(2) franchisee's claim that arbitration provision in franchise agreement was induced by fraud was to be determined by arbitrator.

Motion granted.

**[1] Alternative Dispute Resolution 25T 🔑134(1)**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(1) k. In General. Most Cited Cases

**Alternative Dispute Resolution 25T 🔑143**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk142 Disputes and Matters Arbitrable Under Agreement
25Tk143 k. In General. Most Cited Cases

Determination of whether dispute is arbitrable under Federal Arbitration Act (FAA) comprises two questions: (1) whether there exists valid agreement to arbitrate at all under contract in question, and if so (2) whether particular dispute sought to be arbitrated falls within arbitration agreement's scope. 9 U.S.C.A. § 1 et seq.

**[2] Alternative Dispute Resolution 25T 🔑137**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk136 Construction
25Tk137 k. In General. Most Cited Cases

To find valid agreement to arbitrate, court must apply generally accepted principles of contract law.

**[3] Contracts 95 🔑1**

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases

Party is bound by provisions of contract that it signs, unless it can show special circumstances that would relieve it of such obligation.

**[4] Alternative Dispute Resolution 25T 🔑199**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk197 Matters to Be Determined by Court
25Tk199 k. Existence and Validity of Agreement. Most Cited Cases

Even where party resisting arbitration claims that agreement as a whole is void, unless challenge is to arbitration clause itself, issue of contract's validity is considered by arbitrator.

**[5] Alternative Dispute Resolution 25T 🔑199**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk197 Matters to Be Determined by Court
25Tk199 k. Existence and Validity of Agreement. Most Cited Cases
If party resisting arbitration claims fraud in inducement of the arbitration clause itself, federal court may proceed to adjudicate it, so long as there is some substantial relationship between fraud or misrepresentation and arbitration clause in particular.

**[6] Alternative Dispute Resolution 25T 199**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk197 Matters to Be Determined by Court
25Tk199 k. Existence and Validity of Agreement. Most Cited Cases
Franchisee's claim that franchise agreement was void in its entirety ab initio under New York law due to franchisor's failure to file offering circular with state regulators was to be determined by arbitrator, not court, where claim challenged contract as a whole, not arbitration provisions in particular. 9 U.S.C.A. § 2; N.Y.McKinney's General Business Law § 683.

**[7] Alternative Dispute Resolution 25T 199**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk197 Matters to Be Determined by Court
25Tk199 k. Existence and Validity of Agreement. Most Cited Cases
Franchisee's claim that arbitration provision in franchise agreement was induced by fraud due to fact that offering circular and arbitration provision contained certain discrepancies, in violation of New York law, was to be determined by arbitrator, not court, where discrepancies were immaterial and unrelated to parties' agreement to arbitrate. 9 U.S.C.A. § 2; N.Y.McKinney's General Business Law § 687.

**[8] Alternative Dispute Resolution 25T 195**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk190 Stay of Proceedings Pending Arbitration
25Tk195 k. Dismissal. Most Cited Cases
Where all issues raised in complaint must be submitted to arbitration, court may dismiss action rather than stay proceedings. 9 U.S.C.A. § 16(a)(3), (b).

W. Michael Garner, Dady & Garner, P.A., New York, New York, David Boies, Boies Schiller & Flexner LLP, New York, New York, for Plaintiffs.
Donald L. Rosenthal, Scarola Ellis LLP, New York, New York, Alice Richey, Kennedy Covington Lobdell & Hickman, LLP, Charlotte, North Carolina, for Defendants.

***OPINION AND ORDER***

SCHEINDLIN, District Judge.

## I. INTRODUCTION

*1 This case presents novel issues in the wake of the Supreme Court's recent decision in *Buckeye Check Cashing, Inc. v. Cardegna.*[FN1] Michael Rubin Associates, LLC and Michael Rubin (collectively, "Rubin") bring this action seeking damages and rescission of their franchise agreement, which contains an arbitration clause. Defendants now move to dismiss the action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and Section 3 of the Federal Arbitration Act ("FAA"),[FN2] or, in the alternative, to stay this litigation pending arbitration. Rubin arges that the Court must resolve *first,* whether the agreement containing the arbitration clause was void *ab initio* due to illegality, and *second,* whether the arbitration clause itself was fraudulently induced.[FN3] Rubin relies on a line of Second Circuit cases holding that "if a contract is 'void,' and not 'voidable,' " a party may litigate "the enforceability of an arbitration clause without alleging a particular defect with that clause." [FN4] But *Buckeye Check Cashing* makes clear that whether Rubin argues that the agreement is void or voidable, Rubin may only avoid arbitration if it can successfully challenge the validity of the arbitration clause itself.[FN5] For the following reasons, defendants' motion to dismiss is granted.

## II. BACKGROUND

Sona International, Inc. ("Sona") is a Virginia corporation with its principal place of business in Chesapeake, Virginia.FN6 Sona is the parent company of Sona Laser Centers, Inc. ("SLC"), a Virginia corporation with its principal place of business in Franklin, Tennessee.FN7 Sona grants franchises for use of the SLC trademarks and its proprietary hair removal system. Michael Rubin Associates, LLC is a Connecticut limited liability company with its principal place of business in New York, New York, and its principal, Michael Rubin, is a citizen and resident of New York.FN8 The gravamen of the Complaint is that defendants made false claims related to SLC's hair removal technology and franchises, causing plaintiffs to sustain damages in excess of one million dollars.FN9

In September 2003, plaintiffs entered into an area development agreement with SLC to develop three franchises in central Connecticut, as well as a franchise agreement with SLC authorizing plaintiffs to open a Sona laser hair removal center in New Haven, Connecticut.FN10 In April 2004, Jim Amos, the current chairman and former chief executive officer of Sona, together with Carousel Capital,FN11 purchased all of the outstanding shares of Sona's founders, Dennis and Cookie Jones. They then announced plans to rework the business' concept from a hair removal salon to a "medical spa emporium" ("Sona Med Spa concept").FN12

In November 2004, Rubin opened the first New Haven laser center.FN13 Two months later, in January 2005, SLC presented Rubin with an offering circular ("Offering Circular") that included a new agreement for the Sona Med Spa concept.FN14 On or about March 7, 2005, Rubin entered into a franchise agreement with SLC ("Agreement") to convert its Sona Laser Center into a Sona Med Spa and use the Sona Med Spa marks.FN15 Paragraph 29 of the Agreement provides:

*2 We and you agree that, except for controversies, disputes, or claims related to or based on improper use of the Marks or Confidential Information, all controversies, disputes, or claims between us and our affiliates, and our and their respective shareholders, officers, directors, agents, and/or employees, and you (and/or your owners, guarantors, affiliates, and/or employees) arising out of or related to:
(a) this Agreement or any other agreement between you and us;
(b) our relationship with you;
(c) the validity of this Agreement or any other agreement between you and us; or
(d) any System standard;
must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association.

Rubin does not dispute that this arbitration agreement encompasses all of its claims, or that the non-signatory defendants may invoke the arbitration agreement.FN16 Rubin alleges that the agreement is void because the Offering Circular was not registered with the Law Department as required by the New York Franchise Sales Act ("NYFSA").FN17 Rubin claims that the Offering Circular was also deficient due to "an incorrect cover page; incomplete descriptions of fees; the omission of the identities of directors; [and] failure to include audited financial statements of SLC." FN18 Rubin argues that certain drafting errors, misleading references, and discrepancies related to the Offering Circular demonstrate that "there never could have been a meeting of the minds" on the agreement to arbitrate.FN19

## III. APPLICABLE LAW

[1][2][3] The determination of whether a dispute is arbitrable under the FAA comprises two questions: "(1) whether there exists a valid agreement to arbitrate at all under the contract in question ... and if so, (2) whether the particular dispute sought to be arbitrated falls within the scope of the arbitration agreement." FN20 To find a valid agreement to arbitrate, a court must apply the "generally accepted principles of contract law." FN21 "[A] party is bound by the provisions of a contract that [it] signs, unless [it] can show special circumstances that would relieve [it] of such obligation." FN22

[4] In *Prima Paint Corporation v. Flood & Conklin Manufacturing Company,* the Supreme Court held that "arbitration clauses as a matter of federal law are 'separable' from the contracts in which they are embedded, and that where no claim is made that fraud was directed to the arbitration clause itself, a broad arbitration clause will be held to encompass arbitration of the claim that the contract itself was induced by fraud." FN23 In the years following *Prima Paint,* the Second Circuit drew a distinction between a contract that was void and one that was voidable, holding that the former would vitiate any arbitration clause but the latter would still require arbitration. FN24 The Supreme Court has recently rejected this

distinction, holding that even where the party resisting arbitration claims that the agreement as a whole is void, "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator." FN25 This principle "must include contracts that later prove to be void." FN26

***3** [5] On the other hand, "if the claim is fraud in the inducement of the arbitration clause itself-an issue which goes to the 'making' of the agreement to arbitrate-the federal court may proceed to adjudicate it." FN27 In such a situation there "must be some substantial relationship between the fraud or misrepresentation and the arbitration clause in particular." FN28 This substantial relationship "requires more than a mere claim that the 'arbitration clause is an element of the scheme to defraud;' it must include 'particularized facts specific to the ... arbitration clause which indicate how it was used to effect the scheme to defraud.' " FN29 A party may not "establish a connection between the alleged fraud and the arbitration clause in particular merely by adding the allegation that the arbitration clause was a part of the overall scheme to defraud." FN30

## IV. DISCUSSION

### A. Illegality of the Agreement

Rubin argues that this Court should not enforce the agreement to arbitrate because of defendants' violations of the NYFSA. The NYFSA is a comprehensive statutory scheme that seeks to prevent fraud in the sale of franchises and imposes criminal penalties and civil liability on persons who knowingly violate its requirements.FN31 The statute makes it unlawful for any person to offer to sell or sell any franchise without filing an "offering prospectus" with the New York Law Department.FN32 Rubin argues that because the Offering Circular was not filed with the Law Department, the offer to sell the franchise was unlawful, the entire Agreement was void *ab initio*, and the arbitration clause cannot be enforced.FN33

[6] Rubin's argument is similar to one advanced in *Buckeye Check Cashing*, where "[t]he crux of the complaint [wa]s that the contract as a whole (including its arbitration provision) [wa]s rendered invalid [under Florida law] by an usurious finance charge." FN34 In *Buckeye Check Cashing*, the plaintiffs alleged that the agreement containing the arbitration clause "violated various Florida lending and consumer-protection laws, rendering it criminal on its face." FN35 The Supreme Court held that an arbitrator, not the trial court, should resolve whether a contract is illegal and void *ab initio*.FN36 The Court reasoned that section 2 of the FAA "must include contracts that later prove to be void," FN37 and under *Prima Paint* "a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." FN38 As a result, Rubin's argument that arbitration should not be compelled because the contract as a whole is void must be rejected.

### B. Fraudulent Inducement of the Arbitration Clause

Rubin also argues that the "arbitration provision itself was induced by fraud" because the Offering Circular and Agreement's arbitration provisions contain certain discrepancies in violation of the NYFSA.FN39 It is a violation of the NYSFA for any person to employ a "scheme or artifice to defraud" or to make an "untrue statement of material fact in any offering circular or to omit any material fact" in connection with the offer or sale of a franchise.FN40 In order to succeed on its fraudulent inducement argument, Rubin must demonstrate that the arbitration provision was induced by fraud and include "particularized facts specific to the ... arbitration clause which indicate how it was used to effect the scheme to defraud." FN41 Rubin must also demonstrate that SLC intentionally misrepresented a material fact and that Rubin reasonably relied on that misrepresentation.FN42

***4** [7] The discrepancies noted by Rubin are both immaterial and unrelated to the parties' agreement to arbitrate. The Offering Circular contains a table, excerpted below, listing the franchisee's "principal obligations under the franchise agreement and other agreements." FN43

| **Obligation** | **Section of Franchise and Related** | **Item in Disclosure Document** |
| --- | --- | --- |

| | | |
|---|---|---|
| (x) DisputeResolution | Agreement 29.6 and 32; 17 of User Agreement | 6 and 17 |

Rubin points out that no "User Agreement" was included with the Offering Circular, and the Agreement contains no section 29.6.FN44 But these drafting errors are immaterial, because section 29 of the Agreement includes the parties' agreement to arbitrate their dispute. Item 17(u) of the Offering Circular, entitled "Dispute resolution by arbitration or mediation" includes an unambiguous reference to section 29 of the Agreement.

Rubin also argues that the references to section 32 of the Agreement and section 6 of the Offering Circular are misleading because they do not pertain to dispute resolution.FN45 Section 32 of the Agreement waives the franchisee's rights to punitive damages and a jury trial, and section 6 of the Offering Circular refers to the franchisee's obligation to pay SLC's costs and attorneys' fees in the event of the franchisee's default on its obligations. These sections are clearly relevant to dispute resolution.

Additionally, Rubin points to conflicting choice of law provisions.FN46 Item 17(w) of the Offering Circular requires application of the FAA and Virginia law, while section 32 of the Agreement states that Tennessee law applies. While this discrepancy may call into question the choice of law provision under the Agreement, it has no bearing on the parties' agreement to arbitrate.

Unrelated drafting discrepancies do not demonstrate that the arbitration agreement was procured by fraud or used to effect a scheme to defraud. FN47 Rubin has not pointed to any *material* discrepancy, and has made no attempt to show that defendants *intended* to mislead Rubin with these discrepancies. Nor has Rubin argued that it reasonably relied on any misrepresentations in agreeing to arbitrate. Therefore, Rubin's claim that the arbitration clause was fraudulently induced fails as a matter of law.

### C. Motion to Dismiss

[8] The only remaining issue is whether to grant defendants' motion for a stay of arbitration or their motion to dismiss the case in favor of arbitration. Where all of the issues raised in the Complaint must be submitted to arbitration, the Court may dismiss an action rather than stay proceedings. FN48 In making this determination, the Second Circuit urges district courts to consider the fact that "dismissal renders an order appealable under [9 U.S.C.A.] § 16(a)(3), while the granting of a stay is an unappealable interlocutory order under [9 U.S.C.A.] § 16(b)." FN49 Under the circumstances, I conclude that dismissal is appropriate.

## V. CONCLUSION

*5 For the reasons set forth above, defendants' motion to dismiss is granted. The Clerk of the Court is directed to close this motion [Docket No. 13] and this case.

SO ORDERED.

FN1. --- U.S. ----, 126 S.Ct. 1204, 1209, 163 L.Ed.2d 1038 (2006).

FN2. 9 U.S.C. § 3.

FN3. *See* Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss ("Pl.Mem.") at 1.

FN4. *Adams v. Suozzi*, 433 F.3d 220, 227 (2d Cir.2005) (citing *Denney v. BDO Seidman, L.L.P.*, 412 F.3d 58, 67-68 (2d Cir.2005) and *Sphere Drake Ins. Ltd. v. Clarendon Nat'l Ins. Co.*, 263 F.3d 26, 31 (2d Cir.2001)).

FN5. *See* *Buckeye Check Cashing, Inc.*, 126 S.Ct. 1204, 1209 ("unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator").

FN6. *See* Complaint and Jury Demand ("Compl.") ¶ 10.

FN7. *See id.* ¶¶ 10, 12.

FN8. *See id.* ¶ 4.

FN9. *See id.* ¶ 2.

FN10. *See id.* ¶ 24.

FN11. The parties variously refer to this entity as Carousel Capital, Inc., Carousel Capital Corp., and Carousel Capital Partners II, LP.

FN12. Pl. Mem. at 2 (citing Compl. ¶ 24).

FN13. *See* Compl. ¶ 30.

FN14. *See id.* ¶ 42; Offering Circular, Ex. 2 to Declaration of Michael Rubin in Opposition to the Motion of Defendants to Dismiss or Stay this Action.

FN15. *See* Agreement, Ex. C to Declaration of Marc P. Seidler, Former Counsel to the Defendants, in Support Defendants' Motion to Dismiss.

FN16. *See* Defendants' Reply in Further Support of Defendants' Motion to Dismiss ("Reply Mem.") at 1. Plaintiffs raise only two grounds in opposition to the motion to dismiss-that the Agreement is void and that the arbitration provisions were fraudulently induced. *See generally* Pl. Mem.

FN17. *See* Pl. Mem. at 3 (citing N.Y. Gen. Bus. L. § 680). The sale of franchises in New York is regulated by the NYFSA, which applies when (i) an offer to sell or buy a franchise is made in New York, (ii) the franchise is actually sold in New York, (iii) the franchise operates in New York, or (iv) the franchisee resides in New York. *See* N.Y. Gen. Bus. L. § 681.

FN18. Pl. Mem. at 3-4. Defendants maintain that even if the Agreement was void due to these deficiencies, the two prior franchise agreements, both of which contained an arbitration clause, would then govern this dispute. *See* Reply Mem. at 3.

FN19. Pl. Mem. at 13.

FN20. *Hartford Accident & Indem. Co. v. Swiss Reinsurance Am. Corp.*, 246 F.3d 219, 226 (2d Cir.2001) (quotation marks omitted).

FN21. *Genesco, Inc. v. T. Kakiuchi & Co.*, 815 F.2d 840, 845 (2d Cir.1987).

FN22. *Id.*

FN23. 388 U.S. 395, 402, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967).

FN24. *See Adams*, 433 F.3d at 227; *Denney*, 412 F.3d at 67-68; *ACE Capital Re Overseas Ltd. v. Central United Life Ins. Co.*, 307 F.3d 24, 29 (2d Cir.2002); *Sphere Drake Ins. Ltd.*, 263 F.3d at 32.

FN25. *Buckeye Check Cashing*, 126 S.Ct. at 1209. This issue is distinct from the issue of whether an agreement between the parties was ever concluded. *Buckeye Check Cashing* "does not speak to [that] issue [ ]" and "it is for courts to decide whether the alleged obligor ever signed the contract, ... whether the signor lacked authority to commit the alleged principal, ... and whether the signor lacked mental capacity." *Id.* at 1208 n. 1 (citations omitted).

FN26. *Id.* at 1209-10.

FN27. *Prima Paint*, 388 U.S. at 403-04, 87 S.Ct. 1801.

FN28. *Campaniello Imp., Ltd. v. Saporiti Italia S.p.A.*, 117 F.3d 655, 667 (2d Cir.1997).

FN29. *Garten v. Kurth*, 265 F.3d 136, 143 (2d Cir.2001) (quoting *Campaniello*, 117 F.3d at 667).

FN30. *Id.* at 143-44 (citing *Campaniello*, 117 F.3d at 667).

FN31. *See* N.Y. Gen. Bus. L. § § 680, 690, 691.

FN32. *See* Pl. Mem. at 5-6. Under the NYFSA, "[i]t is unlawful and prohibited for any person to offer to sell or sell in this state any franchise unless and until there shall have been registered with the department of law, prior to such offer or sale, a written statement to be known as an 'offering prospectus' concerning the contemplated offer or sale, which shall contain the information and representations set forth in and required by this section." N.Y. Gen. Bus. L. § 683.

FN33. *See* Pl. Mem. at 5-6. In support of this argument, Rubin relies heavily on *Sphere Drake Insurance Limited*, which held that "[a] party alleging that a contract is void-and providing some evidence in support-is entitled to a trial on the contract's arbitrability." 263 F.3d at 32. However, the Supreme Court's recent decision in *Buckeye Check Cashing* renders this argument moot. *See* 126 S.Ct. at 1207-11.

FN34. *Buckeye Check Cashing*, 126 S.Ct. at 1208.

FN35. *Id.*

FN36. *See id.*

FN37. *Id.* at 1209-10.

FN38. *Id.* at 1211.

FN39. Pl. Mem. at 12-14.

FN40. N.Y. Gen. Bus. L. § 687.

FN41. *Garten,* 265 F.3d at 143.

FN42. Whether Tennessee or Virginia law governs the Agreement, the elements of fraudulent inducement are the same. *See Black v. Black,* 166 S.W.3d 699, 705 (Tenn.2005); *Yuzefovsky v. St. John's Wood Apartments,* 261 Va. 97, 540 S.E.2d 134, 142 (2001).

FN43. Offering Circular at Item 9.

FN44. *See* Pl. Mem. at 13.

FN45. *See id.*

FN46. *See id.*

FN47. *See Garten,* 265 F.3d at 143; *Campaniello,* 117 F.3d at 667. *Cf. Moseley v. Electronic & Missile Facilities, Inc.,* 374 U.S. 167, 171, 83 S.Ct. 1815, 10 L.Ed.2d 818 (1963) (finding an arbitration agreement was induced by fraud where the arbitration agreement was used to obtain a "great amount of work and material from ... subcontractors without making payment therefor and to 'browbeat' ... subcontractors into accepting much less than the value of their claims").

FN48. *See Alford v. Dean Witter Reynolds, Inc.,* 975 F.2d 1161, 1164 (5th Cir.1992).

FN49. *Salim Oleochemicals v. M/V SHROPSHIRE,* 278 F.3d 90, 93 (2d Cir.2002).

S.D.N.Y.,2006.
Rubin v. Sona Intern. Corp.
--- F.Supp.2d ----, 2006 WL 525658 (S.D.N.Y.)

Briefs and Other Related Documents (Back to top)

- 1:05cv06305 (Docket) (Jul. 11, 2005)
- 2005 WL 2158234 (Trial Pleading) COMPLAINT AND JURY DEMAND (Jul. 8, 2005) Original Image of this Document (PDF)

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# EX. 18
# APP. 137 - 139

Briefs and Other Related Documents
U.S. v. Clipper Shipping Co., LtdE.D.La.,1995.Only the Westlaw citation is currently available.

United States District Court, E.D. Louisiana.
UNITED STATES of America
v.
CLIPPER SHIPPING CO., LTD., et al.
**Civ. A. No. 93-2798.**

March 23, 1995.

*ORDER GRANTING MOTION TO COMPEL ARBITRATION*

VANCE, District Judge.

*1 This matter is before the Court on a motion by third-party defendant Bocimar B.V. ("Bocimar") to compel arbitration between Bocimar and third-party plaintiffs Clipper Shipping Co., Ltd., Clipper Shipping Lines, Ltd., Clipper Shipping Ltd. and Clipper Americas, Inc. (the "Clipper Interests") and between Bocimar and third-party defendants Oceanica Armadora S.A. and Fomentos Armadora S.A. ("Armadora"), the owners of the M/V SUN VIL. In connection with its motion to compel, Bocimar seeks to stay all proceedings against it pending in this Court. For the reasons stated below, the motion is granted.

## I. BACKGROUND

The United States brought this claim in August 1993 against the Clipper Interests, *in personam*, and the M/V SUN VIL, *in rem*, for damage allegedly sustained by a consignment of corn in bulk that was carried aboard the M/V SUN VIL from Louisiana to Jordan. Clipper Shipping Ltd. was the charterer of the vessel and the issuers of the bill of lading covering the cargo aboard the M/V SUN VIL. The Clipper Interests filed a third-party complaint against Bocimar B.V., which had chartered the M/V SUN VIL to Clipper Shipping Ltd. Additionally, the Clipper Interests filed a third-party complaint against Armadora, the owner of the M/V SUN VIL, which had chartered the vessel to Bocimar B.V.[FN1]

Clipper Interests' third-party complaint against these charterers was filed pursuant to Fed.R.Civ.Proc. 14(c), which allows a defendant in an admiralty or maritime action to bring in a third party who may be liable to the third-party plaintiff or to the original plaintiff. Rule 14(c) provides a mechanism for a third-party plaintiff to demand a judgment against the third-party defendant in favor of the original plaintiff.

Bocimar now moves the Court for an order compelling arbitration. Bocimar claims that a charterparty between Bocimar and the Clipper Interests provided that any disputes would be submitted to arbitration. Bocimar also claims that the charterparty between Bocimar and Armadora contained an arbitration clause. On the basis of these provisions, Bocimar seeks an order of this Court compelling arbitration between Bocimar and the Clipper Interests and Bocimar and Armadora. Additionally, Bocimar seeks a stay of all proceedings against it, not only with regard to the Clipper Interests and Armadora, but also with regard to plaintiff United States.

The Clipper Interests oppose the motion on several grounds. First, the Clipper Interests claim that the motion to compel arbitration is untimely according to the scheduling order of this Court dated November 2, 1994, which stated that "all pretrial motions shall be filed and served in sufficient time to permit hearing thereon no later than 30 days prior to trial date." Considering that the trial date is April 10, 1995, and the motion, though filed on March 7, 1995, could not be heard until March 22, 1995, the Clipper Interests argue that the motion fails to comply with the Court's order. As a second ground for opposing the motion to compel, the Clipper Interests argue that not all of the Clipper entities are subject to the arbitration clause in the charterparty. Rather, the Clipper Interests assert that only Clipper Shipping Ltd. is subject to the arbitration clause because it is the only Clipper entity that is a party to the charterparty. Finally, the Clipper Interests argue that Bocimar has waived any right to compel arbitration by its participation in litigation and its delay in moving to compel.

## II. ANALYSIS

*2 Bocimar's motion was not filed timely according to the Court's November 2, 1994 scheduling order. However, considering the strong federal policy favoring arbitration, the Court will not hold that this ground without more precludes an order compelling arbitration. Additionally, the motion was filed one month before trial, which afforded the Clipper Interests ample time to oppose the motion.

Whether a controversy is arbitrable under a contract is decided by the court upon examination of the contract. *Associated Builders Corp. v. Ratcliff Construction Co.*, 823 F.2d 904, 905 (5th Cir.1987). Interpretation of the contractual arbitration provision and its applicability to the issue at hand is "colored, however, by the strong national policy favoring arbitration." *Id.* Still, a party cannot be compelled to submit a dispute to arbitration without a contractual agreement to do so. *Neal v. Hardee's Food Systems, Inc.*, 918 F.2d 34, 37 (5th Cir.1990). In a supplemental memorandum, counsel for Bocimar concedes that the only Clipper entity who agreed to submit to arbitration is Clipper Shipping Ltd. Therefore, Clipper Shipping Ltd. is the only Clipper entity that can be compelled to arbitrate this dispute.

Clipper Shipping Ltd. asserts that Bocimar waived its right to compel arbitration by delaying its demand for arbitration and participating in the litigation. Despite the strong federal policy in favor of arbitration, the right to demand arbitration, like any contractual right, can be waived. *St. Mary's Medical Center of Evansville, Inc. v. Disco Aluminum Products, Inc.*, 969 F.2d 585, 587 (7th Cir.1992). Waiver of arbitration will be found "when the party seeking arbitration substantially invokes the judicial process to the detriment or prejudice of the other party." *Miller Brewing Co. v. Fort Worth Distributing Co.*, 781 F.2d 494 (5th Cir.1986). While active participation in the litigation process will preclude a party from later seeking arbitration, minimal participation does not indicate the party's intent to relinquish the right to compel arbitration. *Id.*; *Siam Feather & Forest Products Co., Inc. v. Midwest Feather Co., Inc*, 503 F.Supp. 239, 242 (S.D.Ohio 1980). Bocimar asserts, and the record confirms, that its sole participation in this litigation involved the filing of answers to the complaint and amended complaint of plaintiff United States [FN2] and to the third-party complaint and the amended third-party complaint of the Clipper Interests. Bocimar asserted the contractual obligation to arbitrate as a defense in its answers, evidencing its intent to maintain, rather than to relinquish, its right to compel arbitration. Bocimar further asserts that it has not participated in any discovery and that the only discovery propounded in the litigation has been between the original parties to this litigation, the United States and the Clipper Interests. As such, Bocimar's role in the litigation has been minimal and passive.

*3 This case was filed in August of 1993, and Bocimar was brought in as a third-party defendant in November of 1993. It is undoubtedly true that Bocimar's motion to compel could have been filed earlier in the litigation. However, mere delay in moving to compel arbitration will not constitute a waiver of arbitration absent prejudice to the opposing party. *Com-Tech Associates v. Computer Associates, Int'l, Inc.*, 938 F.2d 1574 (2d Cir.1991). Bocimar has not taken advantage of the discovery process to obtain evidence from Clipper Shipping Ltd. that it could later use to its detriment in an arbitration proceeding. Given the status of the claims herein, Bocimar's delay in compelling arbitration has not prejudiced Clipper Shipping Ltd. Accordingly, the Court finds that Bocimar has not waived its right to compel arbitration.

The Court will now consider the motion to stay proceedings against Bocimar by the parties not subject to arbitration agreements. Although only Clipper Shipping Ltd. and Armadora are subject to arbitration clauses, it is within the Court's discretion to stay proceedings by parties not formally bound by arbitration agreements. *Sam Reisfeld & Co. v. S.A. Eteco*, 530 F.2d 681 (5th Cir.1976). The United States has not asserted a direct claim against Bocimar, and it does not oppose a stay of proceedings as to Bocimar. Moreover, the real dispute between the Clipper Interests and Bocimar is apparently between Clipper Shipping Ltd. and Bocimar. The other Clipper Interests have no privity of contract with Bocimar.

In a similar cargo damage case, the New York district court granted a stay of the proceedings even though only three of the six parties to the litigation were subject to arbitration clauses contained in the two charterparties. *G.R.E. Talbot Bird & Co. v. M/V DIMITRIS LEVANTAKIS*, No. 86-2035, slip op. (S.D.N.Y. Nov. 3, 1988). The Court stated, "Although arbitration would not resolve all of the issues now before the Court, it would at least resolve the issue of who is to assume liability for the damaged cargo." *Id.* at 2. Similarly, here, although arbitration will not dispose of all issues in the case, the arbitration will resolve disputes relative to the third-party defendant and third-party plaintiff Clipper Shipping Ltd. For these reasons, the Court finds that a stay of proceedings against Bocimar is warranted. Accordingly,

IT IS ORDERED that the motion to compel

arbitration and stay proceedings against Bocimar is GRANTED.

FN1. In sum, the owners of the vessel chartered it to Bocimar B.V. and Bocimar B.V., in turn, subchartered the vessel to Clipper Shipping, Ltd. Exhibit D to Bocimar's motion indicates that Clipper Shipping, Ltd. then chartered the vessel to the Hashemite Kingdom of Jordan. However, since the Hashemite Kingdom of Jordan is not a party to this litigation, the third charterparty is not relevant to the instant motion to compel.

FN2. The United States has not asserted a direct claim against Bocimar. Bocimar answered the complaints of the United States because it was tendered as a defendant under Rule 14(c).

E.D.La.,1995.
U.S. v. Clipper Shipping Co., Ltd
Not Reported in F.Supp., 1995 WL 131077 (E.D.La.)

Briefs and Other Related Documents (Back to top)

- 2:93CV02798 (Docket) (Aug. 27, 1993)

END OF DOCUMENT

# EX. 19
# APP. 140 - 142

Briefs and Other Related Documents
Poly-America, Inc. v. Beech Street Corp.N.D.Tex.,2001.Only the Westlaw citation is currently available.

United States District Court, N.D. Texas, Dallas Division.
POLY-AMERICA, INC., Plaintiff,
v.
BEECH STREET CORPORATION, Defendant.
**No. CIV. 3:01-CV-1073-H.**

Oct. 12, 2001.

MEMORANDUM OPINION AND ORDER

SANDERS, Senior J.

*1 Before the Court is Defendant Beech Street Corporation's Motion to Compel Arbitration and Stay Proceedings, filed June 25, 2001; Plaintiff's Response thereto and Alternative Motion to Require Arbitration Be Conducted in Dallas, Texas, filed July 6, 2001; Defendant's Reply, filed July 16, 2001; and Plaintiff's Response to Defendant's Reply, filed July 20, 2001. Upon review of the pleadings and the relevant authorities, the Court determines, for the reasons stated below, that Defendant's Motion to Compel Arbitration and to Stay Proceedings should be GRANTED. Plaintiff's Alternative Motion to Require Arbitration in Dallas is DENIED. Defendant's request for arbitration administration by the American Arbitration Association ("AAA") is DENIED.

*I. Background*

Plaintiff, Poly-America, Inc., filed the instant action in state court on April 9, 2001 alleging breach of contract stemming from a Master Preferred Client Agreement ("Agreement") with Defendant Beech Street Corporation, a preferred provider organization. (Pl.'s Compl. at 1-2). Plaintiff alleges that Defendant charged Plaintiff fees in excess of the amounts agreed to in the Agreement. (Compl. at 1). On May 29, 2001, Defendant filed a Motion to Dismiss for Lack of Jurisdiction, or in the Alternative Plea in Abatement and Original Answer asserting that Plaintiff's claim is subject to mandatory arbitration. (Answer at 1). On June 5, 2001, Defendant removed the action to this Court. [FN1] On June 20, 2001, Defendant filed a First Amended Answer and Counterclaim, in which it re-asserts that Plaintiff's claim is subject to arbitration and contends that Plaintiff failed to pay required sums under the Agreement. (Am. Answer at 4). Plaintiff filed its Answer to Defendant's Counterclaim on June 28, 2001.

FN1. Defendant provides in its Notice of Removal that it was served with the state court action on May 7, 2001.

Defendant moves to compel arbitration pursuant to the mandatory arbitration clause in the Agreement [FN2] and stay proceedings in this Court. (Mot. Compel Arbitration at 2, 3) Defendant requests that the Court compel Plaintiff to arbitrate in Orange Country, California before the American Arbitration Association ("AAA"). (Mot. Compel Arbitration at 3). Plaintiff asserts that Defendant's demand for arbitration in not timely under the arbitration clause in the Agreement, that arbitration should be held in Dallas, Texas, and that arbitration should not be administered by the AAA. (Resp. at 5, 6)

FN2. The arbitration provision provides, in relevant part, as follows:
In the event a dispute concerning this Agreement cannot be satisfactorily resolved, the dispute shall be settled in accordance with the commercial rules of the American Arbitration Association. The arbitration may be initiated by either party by making a written demand on the other party within thirty (30) days of the time the dispute arises. Within thirty (30) days of such demand, the parties will each designate an arbitrator and give written notice of such designation to the other. Within ten (10) days after such notices have been received, the two (2) arbitrators will select a third arbitrator.... The arbitration shall take place in the state of residence of the defendant.
(Def.'s App. 1 at 9).

*II. Analysis*

a. Timeliness

Both Parties agree that the dispute here is one that is addressed by the arbitration provision in the Agreement. Plaintiff, however, asserts that Defendant's arbitration demand is untimely under the time limit set in the arbitration provision. To support its argument, Plaintiff cites to a Maryland Court of Appeals case, which held that timeliness regarding arbitration demands is an issue for the Courts to decide. *See* *Town of Chesapeake Beach v. Pessoa Construction Co., Inc.,* 625 A.2d 1014, 1016 (Md.1993). Not only do Maryland Court of Appeals decisions have little precedential value in this Court, this decision is wholly inconsistent with established federal law interpreting the FAA.

*2 The Federal Arbitration Act (FAA) "establishes that, as a matter of federal law, any doubts concerning the arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 24-25, 103 S.Ct. 927, 941, 74 L.Ed.2d 765 (1983). Several circuits have interpreted the FAA, specifically 9 U.S.C. § 4, to mandate that issues of timeliness of arbitration demands be determined by the arbitrator. *See* *Conticommodity Servs., Inc. v. Philipp & Lion,* 613 F.2d 1222, 1224-25 (2nd Cir.1980); *Glass v. Kidder Peabody & Co., Inc.,* 114 F.3d 446 (4th Cir.1997); *O'Neel v. National Association of Securities Dealers, Inc.,* 667 F.2d 804, 807 (9th Cir.1982). Because Plaintiff does not provide a sufficient reason to deviate from the federal law favoring arbitration of timing issues, the Court grants Defendant's Motion to Compel Arbitration. Pursuant to 9 U.S.C. § 3, the Court also stays all proceedings, including discovery, pending arbitration.

b. Location for arbitration

Defendant and Plaintiff dispute the meaning behind the Agreement's forum-selection clause. The clause provides "The arbitration proceeding shall take place in the state of residence of the defendant." Defendant asserts that under this provision, the Court should order arbitration in Orange County, California, the Defendant's residence. (Mot. to Compel Arbitration at 3). Plaintiff contends that it is the "defendant" for arbitration purposes, and therefore arbitration should be held in its place of residence, Dallas, Texas. (Resp. at 7-8).

The FAA provides that "the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4. In interpreting arbitration provisions, including forum-selection clauses, courts must look to contract law. *See* *Snyder v. Smith,* 736 F.2d 409, 419 (7th Cir.1984); *National Iranian Oil Co. v. Ashland Oil, Inc.,* 817 F.2d 326, 335 (5th Cir.1987) (noting that arbitration can only be imposed upon those who have agreed). It is well established that "Words in a contract must be given their usual and ordinary meaning, and technical words are given their usual legal meaning." *Robin v. Sun Oil Co.,* 548 F.2d 554, 577 (5th Cir.1977). Here, there is only one "Defendant," and it is the party that Plaintiff sued in state court. To extend the meaning of the word "defendant" to "defendant for arbitration purposes," as Plaintiff requests, would be to rewrite the contract. Therefore, Plaintiff's Motion to Require Arbitration in Dallas, Texas is denied.

c. Appointment of Arbitrators

Although Defendant acknowledges that the Agreement does not mandate arbitration administration by the AAA, Defendant suggests that the AAA should administer the arbitration because the Agreement states that arbitration shall be conducted according to the commercial rules of the AAA. (Reply at 5). Defendant also asserts that the party who initiates the arbitration demand should choose the arbitration method. Plaintiff contests Defendant's request by citing to the Agreement, which calls for each of the parties to appoint one arbitrator and that the appointed arbitrators would appoint a third.FN3 Plaintiff also notes that it was advised by the AAA in a letter dated June 22, 2001, that at Defendant's request, the AAA would appoint arbitrators. (Resp. at 7).

FN3. The agreement provides "the parties will each designate an arbitrator and give written notice of such designation to the other. Within ten (10) days after such notices have been received, the two (2) arbitrators will select a third arbitrator."

*3 The FAA provides that "If the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed ...." 9 U.S.C. § 5. The Court finds Defendant's reasons for deviating from this rule to be insufficient. The notion that the party demanding arbitration should choose the arbitration method contradicts not only the Agreement but the policy behind arbitration. *See* *Lobo & Co., Inc. v. Plymouth Navigation Co.,* 187 F.Supp. 859, 860 (S.D.N.Y.1960) ("Arbitration agreements are aimed at amicable determination of disputes with results which both parties will be willing to accept. Toward this end, it is desirable that the arbitration panel consist of arbitrators chosen by each of the parties."). In addition, Defendant does not articulate any reason that the appointment of arbitrators by the parties would be inconsistent with the provision of the agreement calling for arbitration under the rules of the AAA. Therefore, the procedures for appointing arbitrators as set out in the Agreement shall be followed and Defendant's request that the AAA administer arbitration of the dispute is denied.

*IV. Conclusion*

For the reasons stated above, Defendant's Motion to Compel Arbitration and Stay Proceedings is GRANTED. Plaintiff's Motion to Require Arbitration in Dallas, Texas is DENIED. Defendant's request that the AAA administer arbitration is DENIED. The Court also strikes Plaintiff's Response to Defendant's Reply, filed July 20, 2001 as not provided for by the Court or the Local Rules.

The Parties are DIRECTED to report on the status of arbitration proceedings no later than noon, December 17, 2001.

SO ORDERED.

N.D.Tex.,2001.
Poly-America, Inc. v. Beech St. Corp.
Not Reported in F.Supp.2d, 2001 WL 1326450 (N.D.Tex.)

Briefs and Other Related Documents (Back to top)

- 3:01cv01073 (Docket) (Jun. 05, 2001)

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# EX. 20
# APP. 143 - 147

Briefs and Other Related Documents
Downer v. SiegelE.D.La.,2002.Only the Westlaw citation is currently available.

United States District Court, E.D. Louisiana.
Linda L. DOWNER and Hunt B. Downer
v.
Fred SIEGEL, the Siegel Group, Inc., Dain Rauscher, Inc., et al
**Nos. Civ.A. 02-1706, Civ.A. 02-2399, Civ.A. 02-2733.**

Sept. 19, 2002.

*ORDER AND REASONS*

LIVAUDAIS, J.

***1** This matter is before the Court on defendants' Motions to Stay Proceedings Pending Arbitration (Record document # s 10, 15 and 33) and plaintiffs' Linda and Hunt Downer's Motion to Stay, to Remand, to Allow Additional Litigation Be Filed, to Allow Discovery, And For an Evidentiary Hearing (R.D. # 25), which were heard at oral argument on September 18, 2002. After consideration of the complaints, motions, memoranda, arguments of counsel, and the law, and for the reasons that follow, the defendants' motions to stay pending arbitration are granted.

*BACKGROUND*

On November 3, 1997, plaintiff Hunt Downer entered into and signed an IRA brokerage account agreement with Dain Rauscher which included a pre-dispute arbitration clause. Several weeks later, both Hunt and Linda Downer signed an additional asset management agreement with Rauscher Pierce Refsnes ("RPR"), [FN1] which also included a pre-dispute arbitration clause. On or about November 27, 1997, the Downers agreed to make an investment in a Texas based company called World ET by the purchase a debenture at the suggestion of Fred Siegel, an agent of Dain Rauscher. In early 1998, Patrick and Dorothy Landry, friends of the Downers, also entered into an account agreement with Dain Rauscher which included a pre-dispute arbitration clause, and then also through Fred Siegel made a similar investment in the same company.

FN1. At some point, through several mergers, Dain Rauscher and RPR became RBC Dain Rauscher, which is the defending entity.

Four years later, unhappy with the results of that investment, the Downers sued defendants in state court alleging that defendants mishandled the accounts, and in an amended petition alleged deception and fraud in the inducement of their investment at issue, breach of fiduciary duties and violation of NASDAQ Rules of Conduct, and ultimately fraud in the inducement of the account agreements at Dain Rauscher. Defendants removed the action to federal court and filed the first two motions at bar to stay the action pending arbitration.

Meanwhile, the Landrys also filed in state court a "Petition for Damages and to have Contract Declared as Void *Ab Initio*" against most of the same defendants, which was removed to federal court and consolidated with the Downers' case. (CA 02-2399 at R.D. # 26). The Landrys specifically allege "fraud under the laws of Louisiana and the Securities and Exchange Act." See Complaint at ¶ 13. The Downer's also filed a second action in state court entitled a "Suit to Rescind Arbitration Clause in Contract that is Void *Ab Initio*", which was also removed and consolidated with the other two cases. (CA 02-2733 at R.D. # 37).

On August 9, 2002, the Court granted defendants' motions to stay the Downers' suit and ordered the case closed pending arbitration. (R.D. # 22). On that same day, the Downers' filed the third motion before the Court, which requests multiple forms of relief. The Court subsequently reopened the case, recalled and vacated its prior Order and Reasons, and set all pending motions for oral argument on September 18, 2002. The fourth motion on the docket is defendants' motion to stay the Landry action pending arbitration.

*ANALYSIS*

***2** The Federal Arbitration Act ("FAA") provides that a written arbitration clause in a contract involving commerce "shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. "[T]he Act leaves no place for the exercise of discretion ..., but instead mandates" that a stay be issued. Dean Witter Reynolds, Inc., v. Byrd., 105 S.Ct. 1238, 1241 (1985). The FAA expresses a strong national policy favoring arbitration of disputes, and all doubts concerning the arbitrability of claims should be resolved in favor of arbitration. *Primerica Life Insurance Co. v. Brown,* 304 F.3d 469, 2002 WL 1988234 *1 (5th Cir. Aug. 28, 2002), *citing Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984).

However, because arbitration is a matter of contract between the parties, the court must determine whether the parties agreed to arbitrate the dispute in question before it can compel arbitration of the dispute. *Rushe v. NMTC, Inc.,* 2002 WL 575706 *4 (E.D.La.4/16/02) *citing AT & T Technologies, Inc. v. Communications Workers of Am.,* 475 U.S. 643, 648, 106 S.Ct. 1415, 1418, 89 L.Ed.2d 648 (1986). The Fifth Circuit identified a two step inquiry to determine whether parties should be compelled to arbitrate: (1) whether a valid agreement to arbitrate between the parties exists, and (2) whether the dispute falls within the scope of that arbitration agreement. *Id., citing Pennzoil Exploration and Prod. Co. v. Ramco Energy Ltd.,* 139 F.3d 1061, 1065 (5th Cir.1998). In *Primerica,* the Fifth Circuit identified a slightly different two step analysis which essentially combines *Rushe* steps one and two,[FN2] and adds as a third step consideration of whether any federal statute or policy renders the claims nonarbitrable. 2002 WL 1988234 *2. Moreover, when conducting this two pronged analysis, courts must not consider the merits of the underlying action. *Id.,* citing *Snap-On Tools Corp. v. Mason,* 18 F.3d 1261, 1267 (5th Cir.1994).

FN2. The first step is that the court must determine whether the parties agreed to arbitrate the dispute. *Primerica Life Insurance Co. v. Brown,* 304 F.3d 469, 2002 WL 1988234 *1 (5th Cir. Aug. 28, 2002), citing *R.M. Perez & Assoc., Inc. v. Welch,* 960 F.2d 534, 538 (5th Cir.1994) (citing *mitsubishi Motors Corp. v. Soler Chrysler-Plymouth,* 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985)).

Finally, the Supreme Court in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967) held that when the contract in question is within the coverage of the FAA, "if the claim is fraud in the inducement of the arbitration clause itself-an issue which goes to the 'making' of the agreement to arbitrate-the federal court may proceed to adjudicate it," but the federal court cannot consider claims of fraud in the inducement of the contract itself. *Id.,* 87 S.Ct. at 1806, *accord, Primerica* 2002 WL 1988234 *2 (5th Cir. Aug. 28, 2002).

The arbitration clause at issue is extremely broad, as follows in pertinent part:

ALL CONTROVERSIES WHICH MAY ARISE BETWEEN THE CLIENT AND RPR, ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES OR EMPLOYEES, PRESENT OR FORMER, CONCERNING ANY ACCOUNT MAINTAINED BY THE CLIENT WITH RPR, ANY TRANSACTION INVOLVING RPR AND THE CLIENT, REGARDLESS OF WHETHER SUCH TRANSACTION OCCURRED IN THE CHOICE ACCOUNT OR ANOTHER ACCOUNT, OR THE CONSTRUCTION, PERFORMANCE OR BREACH OF THIS OR ANY OTHER AGREEMENT BETWEEN THE CLIENT AND RPR, WHETHER ENTERED INTO PRIOR, ON, OR SUBSEQUENT TO THE DATE HEREOF, SHALL BE DETERMINED BY ARBITRATION TO THE FULL EXTENT PROVIDED BY LAW. ACCORDINGLY, BOTH RPR AND THE CLIENT ARE WAIVING THEIR RESPECTIVE RIGHTS TO SEEK REMEDIES IN COURT, INCLUDING AMONG OTHER THINGS, THE RIGHT TO A JURY TRIAL.

*3 The Downers do not deny that their claims implicate the two brokerage account agreements containing the pre-dispute arbitration clauses, but argue that those agreements are void *ab initio* because they were fraudulently induced in their purchase of the debenture. The fraud alleged goes to the management of the account *after* entering into the agreements, not in the inducement to enter into the brokerage account agreements, and not in the inducement to agree to the arbitration clause within the agreements.[FN3]

FN3. Plaintiffs cite *George Engine Co., Inc. v. Southern Shipbuilding Corp.,* 350 So.2d 881 (La.1977) as holding that the court, not the arbitrator, has jurisdiction to determine fraud or duress in the inception of the contract containing the arbitration agreement. *Id.* at 884. In that case, the Louisiana Supreme Court declined to follow the lead of the U.S. Supreme Court in *Prima Paint.* The federal district court, in *Rushe,supra,* declined to follow *George*

> *Engine*, explaining that the *George Engine* Court was interpreting the Louisiana Arbitration Act § § 4102, 4203, not the FAA.

The Downers next argue that the IRA Agreement is not enforceable against Linda Downer because she did not sign it and that the second agreement is unenforceable because their signatures are not dated. First, the language in the arbitration clause Linda Downer did sign is broad enough to cover disputes relative to acts that occurred prior to the date that agreement was signed. Second, Louisiana Civil Code art. 2346 provides that "[e]ach spouse acting alone may manage, control, or otherwise dispose of community property unless otherwise provided by law." Hunt Downer's signing of the IRA account agreement to manage the community property is valid as to Linda Downer's community interest in that property as well as his. Moreover, Section 3 of the FAA does not require that an agreement be signed in order to enforce an arbitration agreement contained within it.

The Downers also dispute that RBC Dain Rauscher is actually the successor to RPR, therefore entitled to invoke the asset management arbitration agreement. That dispute, however, goes to the merits of the underlying claim, which this Court may not address.

Notably, none of the plaintiffs specifically allege fraud in the inducement of the arbitration agreement contained in those account agreements. Neither have plaintiffs pointed to any federal statute or policy that may render the claims nonarbitrable. There are thus no external impediments to the arbitrability of all claims. All of the plaintiffs signed the agreement; all agreed to arbitrate "all controversies which may arise". All of their claims, including controversies as to fraud in the inducement of the agreement containing the arbitration clause, are arbitrable.

Plaintiffs' counsel argued before the Court that in fairness and as a matter of justice, the multiple allegations of fraud should render not only the account agreements void *ab initio*, but should also void the arbitration clause contained in those agreements. While the Court can understand the plaintiffs' disappointment with their investments and frustration in dealing with the aftermath, the law does not support their position that they should be allowed to litigate the matter. Moreover, while arbitration is binding on the parties, the Court can vacate a decision of an arbitrator if the award: (1) is contrary to public policy, (2) is arbitrary and capricious, (3) fails to draw its essence from the underlying contract, and (4) is in manifest disregard of the law. *Primerica*, at *3 (Dennis, C.J., concurring) citing *Williams v. Cigna Fin. Advisors, Inc.*, 197 F.3d 752, 758, 761-62 (5th Cir.1999).

*4 Accordingly,

IT IS ORDERED that defendants' motions (R.D. # s 10, 15 and 33) to Stay Proceedings Pending Arbitration are GRANTED; and,

IT IS FURTHER ORDERED that plaintiffs' Linda and Hunt Downer's motion to stay, to remand, to allow additional litigation be filed, to allow discovery, and for an evidentiary hearing (R.D. # 25) be and is hereby DENIED; and,

IT IS FURTHER ORDERED that this case, and any related lawsuits BE AND ARE HEREBY STAYED PENDING ARBITRATION;

IT IS FURTHER ORDERED that the Clerk of Court mark this action closed for statistical purposes and place this matter in a Civil Suspense File;

IT IS FURTHER ORDERED that the Court shall retain jurisdiction and the matter shall be restored to the trial docket if circumstances change this action, upon motion of a party, within 30 days of any such change of circumstances, so that it may proceed to final disposition. This order shall not prejudice the rights of the parties to this litigation.

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Not Reported in F.Supp.2d, 2002 WL 31106920 (E.D.La.)

Briefs and Other Related Documents (Back to top)

- 2005 WL 2141065 (Trial Motion, Memorandum and Affidavit) Motion for New Trial (Jul. 28, 2005) Original Image of this Document with Appendix (PDF)
- 2003 WL 23863150 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Siegel's Opposition to Restoring the Matter to the Trial Docket (Dec. 4, 2003)
- 2003 WL 23863147 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Motion to Have the Matter Restored to the Trial Docket Because of Change in Circumstances (Dec. 2, 2003) Original Image of this Document (PDF)
- 2003 WL 23863143 (Trial Motion, Memorandum

and Affidavit) Defendants' Opposition to Plaintiffs' Motion to Have the Matter Restored to the Trial Docket Because of a Change in Circumstances (Nov. 25, 2003) Original Image of this Document with Appendix (PDF)
• 2003 WL 23863138 (Trial Motion, Memorandum and Affidavit) Additional Supplemental Memorandum in Support of Motion for Reconsideration of the Court's Order and Reasons Dated May 29, 2003 (Jul. 10, 2003)
• 2003 WL 23863136 (Trial Motion, Memorandum and Affidavit) Memorandum in Response to Dain Rauscher's Opposition to Plaintiffs' Motion for Reconsideration of the Court's Order and Reasons Dated May 29, 2003 (Jun. 17, 2003) Original Image of this Document (PDF)
• 2003 WL 23863133 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Motion for Reconsideration of the Court's Order and Reasons Dated May 29, 2003 (Jun. 11, 2003) Original Image of this Document (PDF)
• 2003 WL 23863130 (Trial Motion, Memorandum and Affidavit) Supplemental Memorandum in Support of Motion for Reconsideration of the Court's Order and Reasons Dated May 29, 2003 (Jun. 6, 2003)
• 2003 WL 23863124 (Trial Motion, Memorandum and Affidavit) Supplemental Memorandum in Support of Motion to Remand, or Continue on to Trial Against Dain Rauscher, Inc., and Memorandum in Opposition to Motion for Sanctions by Defendant, Dain Rauscher, Inc. Subject to Rule 11 (May 5, 2003) Original Image of this Document with Appendix (PDF)
• 2002 WL 32716428 (Trial Motion, Memorandum and Affidavit) Defendants'%n*%n Memorandum in Opposition to Plaintiffs' Motion for Reconsideration (Dec. 9, 2002) Original Image of this Document (PDF)
• 2002 WL 32716426 (Trial Motion, Memorandum and Affidavit) Supplemental Memorandum in Support of Motion for Stay Pending Appeal So As to Allow Additional Evidence (Dec. 3, 2002) Original Image of this Document with Appendix (PDF)
• 2002 WL 32716425 (Trial Motion, Memorandum and Affidavit) Defendants' Memorandum in Opposition to Plaintiffs' Motion for Stay Pending Appeal (Dec. 2, 2002)
• 2002 WL 32716423 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Motion for Reconsideration (Oct. 8, 2002) Original Image of this Document (PDF)
• 2002 WL 32716421 (Trial Motion, Memorandum and Affidavit) Memorandum in Response to Motion to Stay Proceedings and for Oral Argument (Sep. 13, 2002)
• 2002 WL 32716420 (Trial Motion, Memorandum and Affidavit) Defendants Tom Denmark and World Environmental Technologies, Inc.'s Memorandum in Response to Plaintiffs' Motion to Stay Proceedings, Motion to Remand, Motion to Allow Additional Litigation to be Filed, Motion to Allow Discovery, and Motion for Evide ntiary Hearing (Sep. 12, 2002) Original Image of this Document (PDF)
• 2002 WL 32716417 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Plaintiffs' Motion to Stay Proceedings, Motion to Remand, Motion to Allow Additional Litigation to be Filed, Motion to Allow Discovery, and Motion for Evidentiary Hearing (Sep. 10, 2002) Original Image of this Document (PDF)
• 2002 WL 32716416 (Trial Motion, Memorandum and Affidavit) Defendants'%n*%n Memorandum in Opposition to Plaintiffs' Motion to Stay Proceedings, Motion to Remand, Motion to Allow Additional Litigation to be Filed, Motion to Allow Discovery, and Motion for Evidentiary Hearing (Sep. 9, 2002) Original Image of this Document (PDF)
• 2:02CV02733 (Docket) (Sep. 05, 2002)
• 2002 WL 32716414 (Trial Motion, Memorandum and Affidavit) Supplemental Memorandum in Support of Motion to Stay Proceedings, Motion to Remand, Motion to Allow Additional Litigation to be Filed, Motion to Allow Discovery, and Motion for Evidentiary Hearing (Sep. 4, 2002) Original Image of this Document with Appendix (PDF)
• 2002 WL 32716413 (Trial Motion, Memorandum and Affidavit) Reply Memorandum in Support of Motion to Stay Proceedings Pending Arbitration (Aug. 6, 2002) Original Image of this Document (PDF)
• 2002 WL 32716411 (Trial Motion, Memorandum and Affidavit) Reply Memorandum in Support of Defendants' Motion to Stay Proceedings Pending Arbitration (Aug. 5, 2002) Original Image of this Document (PDF)
• 2:02CV02399 (Docket) (Aug. 05, 2002)
• 2002 WL 32716409 (Trial Motion, Memorandum and Affidavit) Opposition to Defendants' Motion to Stay Proceedings Pending Arbitration and to Ask the Court to Grant Appropriate Discovery in the Interim (Aug. 2, 2002)
• 2002 WL 32716407 (Trial Pleading) Plaintiffs' Second Supplemental and Amended Complaint (Jul. 23, 2002) Original Image of this Document (PDF)
• 2002 WL 32716405 (Trial Pleading) Plaintiffs' First Supplemental and Amended Complaint (Jun. 21, 2002) Original Image of this Document (PDF)
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